UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/663,345
Filing Date: September 15, 2003
Appellant(s): ADENDORFF ET AL.

Mr. Stephen J. Walder
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 21, 2010 appealing from the Office

action mailed October 28, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the appeal brief is correct.

(4) Status of Amendments After Final

The statement of the status of amendments after final rejection contained in the appeal brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the appeal brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the appeal brief is correct.

(8) Evidence Relied Upon

(U.S. Patent No. 6,668,253)   THOMPSON ET AL.

(WO 01/88769 A1)   SANDS

The information disclosure statement (IDS) submitted on 1/11/2010 was filed

after the mailing date of the Final Office Action on 10/28/2009. The submission is in

compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure

statement is being considered by the examiner.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims: The

ground(s) of rejection are reproduced below from the Final Office Action, with the

addition of supplemental explanatory annotations and is provided here for the

convenience of Both the Appellant and the Board of Patent Appeals

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 1, 7-9, 20, 27, 33-35, 45, and 52 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Thompson et al (US 6668253) in view of Sands (WO

01/88769).

3.   With respect to **claims 1, 20, 27, 45 and 52**, Thompson teaches a performance

monitoring system comprising:

    a.   a staging area receiving data from one or more data sources **(column/line

    2/5-17, regarding the data warehouse server)**;

    b.   a KPI store storing performance information relating to Key Performance

    Indicators (KPIs) **(column/line 7/20-23, regarding the user interface for

    access to key performance indicators)**;

    c.   a loader transforming the received data into the performance information

    relating to the KPIs **(column/line 1/47-49, regarding combination of data to

    provide an overall view of the enterprise performance; column/line 2/10-20,

    regarding the enterprise information management "EIM" system;

    column/line 4/53-56, regarding loading data to the transformation and

    staging server)**,

    d.   an information presentation unit presenting the performance information to

    a user, wherein the information presentation unit has a front-end interface having

    a data guided monitoring function that receives a user input and presents

    relevant performance information in a selected order based on the user input to

    allow the user to monitor and analyze the performance information **(column/line**

9/1-31, regarding the ability to access and view information and reports in grid mode, the right click function allows for the modification of report properties).

Thompson does not teach calculating scores and loading the scores into the KPI store. However, Sands teaches:

e.   calculating scores based on the received data and the performance information stored in the KPI store to indicate changes in the KPIs such that the scores indicate if associated KPIs are getting better or worse or unchanged and loading the performance information including the scores into the KPI store **(page/line 3/28-4/23, regarding measuring outputs of key performance indicators to determine change in performance for business improvement)**.

f.   wherein the staging area receives a target value and an actual value for a KPI **(page/line 4/2-3, regarding the determination of a target value and measuring an actual value for each key performance indicator; 8/16-19, regarding performance of the business is measured against a range of key performance indicators)**, and wherein the loader calculates a score for the KPI based on the actual value and the target value to indicate if the KPI is good, bad or neutral compared to the target value **(page/line 4/5-12, regarding the values associated with the changes in performance)**, and calculates another score by comparing the calculated score and a previously calculated score for a previous comparison of a previous actual value to the target value, the previously

calculated score being calculated and stored in the KPI store at a previous loading, so that the another score indicates if the KPI is getting better, worse, or is unchanged **(page/line 10/28-11/6, regarding global deviation)**.

It would have been obvious to one of ordinary skill in the art to include the business system of Thompson with the ability to calculating scores and loading the scores into the KPI store as taught by Sands since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

4.   With respect to **claims 7 and 33**, Thompson in view of Sands teaches the performance monitoring system as claimed in claim 1. Thompson further teaches the information presentation unit has a function that presents a higher level of the performance information in a form capable of breaking down into a lower level of performance information **(column/line 6/65-7/11)**.

5.   As to **claims 8 and 34**, Thompson in view of Sands teaches the performance monitoring system as claimed in claim 1. Thompson further teaches wherein the staging area provides to the loader data that has changed from a last loading **(column/line 4/64-5/14)**.

6.   Regarding **claims 9 and 35**, Thompson in view of Sands teaches the performance monitoring system as claimed in claim 1. Thompson further teaches the staging area contains value information for the KPIs and time information relating to one or more time periods to which the value information is applied where the KPI store is capable of storing the value information in association with the time information in a relational cube having the time and indicator dimensions, actual values, target values and score values for the KPIs, and business metadata as a network of content of the metadata **(figure 23, column/line 32/39-49)**.

Thompson is modified by Sands to teach the loader with a function to determine which KPI is affected by a change in the value information **(page/line 10/17-27)**. It would have been obvious to one of ordinary skill in the art to include the business system of Thompson with the ability to have a loader with a function to determine which KPI is affected by a change in the value information as taught by Sands since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

7.   Claims 14-16, 22, 24-25, 40, 47, 49-50 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al (US 6668253) and Sands (WO 01/88769) in view of Porkorny et al (US 2003/0150908).

8.   With respect to **claim 14 and 55**, Thompson in view of Sands teaches the performance monitoring system as claimed in claim 1 and an application server accessing and managing the performance information stored in the KPI store **(column/line 34/65-35/9)**. Thompson in view of Sands does not directly teach allowing annotations to the performance information. However, Pokorny teaches the information presentation unit comprises: wherein the front-end interface has a function that allows a user to add to or modify annotation in the performance information, and wherein the KPI store stores the annotation **(paragraph 0056 and 0096)**.

It would have been obvious to one of ordinary skill in the art to include the business system of Thompson and Sands with the ability to allowing annotations to the performance information as taught by Porkorny since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

9.   As to **claims 15 and 40**, Thompson and Sands in view of Porkorney teaches the performance monitoring system as claimed in claim 1. Thompson further teaches the data guided monitoring function presents the performance information of a selected KPI together with related KPIs which are in a cause and effect relation with the selected KPI.

And presents the performance, information of related KPIs in a diagram to navigate the user through the related KPIs **(column/line 9/1-31)**.

10. Regarding **claims 16, 22, 24-25, 47, and 49-50**, Thompson and Sands in view of Porkorney teaches the performance monitoring system as claimed in claim 15. Thompson further teaches the data guided monitoring function has a function that presents the performance information for relevant KPI's sorted based on a selected type of scores, and/or presents the performance information for relevant KPI's filtered and sorted based on the scores of the KPI's **(column/line 10/1-6)**.

(10) Response to Argument

10.1 The Appelant argues, see Appeal Brief, Pages 9-11, that the prior art of record fails to disclose, teach or suggest all of the required steps of independent claims 1, 20, 27, 45 and 52, specifically that the prior art of record fails to teach or suggest:

- Sands is not concerned with whether a trend of a key performance indicator (KPI) indicates that the KPI is getting better, worse, or not changing (page 9)

- Sands does not teach comparing the calculated score and a previously calculated score for a previous comparison of a previous actual value to the target value, the previously calculated score being calculated and

stored in the KPI store at a previous loading, so that the another score indicates if the KPI is getting better, worse, or is unchanged (*i.e. only looks at a single instance in time*) (page 9-10*).*

In response to Appelant's argument that the prior art of record fails to teach or suggest all of the required steps of independent claims 1, 20, 27, 45 and 52, the Examiner respectfully disagrees.

Sands teach a method of monitoring the change in business performance for the purpose of business improvement (page/line 3/17-25 and 4/17-23). An appropriate model is first selected, parameters are set, and then budget values (Bi) or ("target value") and actual output values (Zi) or ("actual value") are calculated for the KPIs (page/line 4/13-16). A deviation value (Di) ("score") is calculated from the difference between the budget values and the actual values of the KPIs (page/line 4/4). Business improvement is tracked by simulating changes to the performance and controllable parameters of the model (page/line 4/17-20). As model parameters change, the values of the budget, actual and deviation values change (page/line 10/1-3). The changes in values are compared to the previous values to determine if there is business improvement (page/line 6/21-26). Furthermore, business performance is an accumulative measure of the overall performance (page/line 8/14-16). It would have been obvious to one with ordinary skill in the art to interpret the invention of Thompson in view of Sands as the following in accordance with Appelant's invention:

- an improvement in model parameters values = good or getting better

- a decline in model parameter values = bad or getting worse

- no change in model parameter values = neutral or unchanged.

Therefore, Sands is concerned with whether a trend of KPIs indicates that the KPIs are getting better, worse, or not changing. Moreover, Sands does look an more than a single instance of time and teach comparing the calculated score and a previously calculated score for a previous comparison of a previous actual value to the target value, the previously calculated score being calculated and stored in the KPI store at a previous loading, so that the another score indicates if the KPI is getting better, worse, or is unchanged. The combination of Thompson in view of Sands does teach and suggest the limitations of claims 1, 20, 27, 45 and 52.

10.2. Dependent Claims 9 and 35

The Appelant argues, see Appeal Brief, Pages 13-14, that the prior art of record fails to disclose, teach or suggest all of the required steps of dependent claims 9 and 35, specifically that the prior art of record fails to teach or suggest:

- Thompson and Sands fail to teach or render obvious the features of the staging area and containing value information for the KPIs and time information relating to one or more time periods to which the value information is applied.

In response to Appelant's argument that the prior art of record fails to teach or suggest all of the required steps of dependent claims 9 and 35, the Examiner respectfully disagrees.

Thompson teaches meta data management for key performance indicators (Figure 23, column/line 32/39-49). The meta data is loaded on the data warehouse server, indicating the date time and number of records loaded (column/line 5/9-14). Therefore, the combination of Thompson in view of Sands stores time information with value information in a relational cube as specified in claims 9 and 35.

10.3. Motivation to combine Thompson, Sands and Pokorny

The Appelant argues, see Appeal Brief, Page 15, that there is no motivation to combine the prior art references, the examiner respectfully disagrees. KSR forecloses Appelant's argument that a specific teaching is required for a finding of obviousness. KSR, 127 S. T. at 1741, 82, USPQ2d at 1396.

Further it is noted that an obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not. See KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398 (2007) ("The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.").

10.4. Dependent Claims 14 and 55

The Appelant argues, see Appeal Brief, Pages 15-16, that the prior art of record fails to disclose, teach or suggest all of the required steps of dependent claims 14 and 55, specifically that the prior art of record fails to teach or suggest allowing annotations to the performance information of KPIs.

In response to Appelant's argument that the prior art of record fails to teach or suggest all of the required steps of dependent claims 14 and 55, the Examiner respectfully disagrees. Pokorny teaches a user interface for logging data association with event parameters (paragraph 0008), and reporting event based KPIs in product manufacturing, wherein the output parameters may be modified (paragraph 0056). Furthermore, Pokorny teaches a user interface for annotating event records (paragraph 0096). It would have been obvious to one with ordinary skill in the art to interpret the invention of Thompson in view of Sands, in further view of Pokorny to teach the annotation of event records as the annotation of KPIs in accordance with Appelant's invention. Therefore Thompson in view of Sands, in further view of Pokorny does teach and suggest the limitations of claims 14 and 55.

10.5. Dependent Claims 15 and 40

The Appelant argues, see Appeal Brief, Pages 16-17, that the prior art of record fails to disclose, teach or suggest all of the required steps of dependent claims 15 and 40, specifically that the prior art of record fails to teach presenting the performance information of a selected KPI together with related KPIs which are in a cause and effect relation with the selected KPI, and presents the performance information of related KPIs in a diagram to navigate the user through the related KPIs.

In response to Appelant's argument that the prior art of record fails to teach or suggest all of the required steps of dependent claims 15 and 40, the Examiner respectfully disagrees. Pokorny teaches an enterprise information management system that has a flexible presentation unit that provides reports and multiple ways in which a user can access and view information (column/line 9/1-31). Data contained on the report can be sorted (column/line 9/27-31). Furthermore, the user interface provides access to performance indicators through reports or graphs displayed on the content area (column/line 39/15-18).

It would have been obvious to one with ordinary skill in the art to interpret the invention of Thompson in view of Sands, in further view of Pokorny to teach presenting the performance information of a selected KPI together with related KPIs which are in a cause and effect relation with the selected KPI, and presents the performance information of related KPIs in a diagram to navigate the user through the related KPIs in accordance with Appelant's invention. Therefore Thompson in view of Sands, in further view of Pokorny does teach and suggest the limitations of claims 15 and 40.

10.6. Dependent Claims 16, 22, 24-25, 47 and 49-50

The Appelant argues, see Appeal Brief, Pages 18-20, that the prior art of record fails to disclose, teach or suggest all of the required steps of dependent claims 16, 22, 24-25, 47 and 49-50, specifically that the prior art of record fails to teach:

-        presenting the performance information for relevant KPIs sorted based on a selected type of scores, and presents the performance information for relevant KPIs filtered and sorted based on the scores of the KPIs.

-        presenting multiple view metric types, and has a metric selector that allows the viewer to select a preferred view metric type to present sorted and filtered performance information.

-        the loader has a function that calculates scores based on the received data and the performance information stored in the KPI store to indicate changes in the KPIs, and the viewer driven sorter and filter has a function that sorts and filters the performance information based on the scores calculated based on the changes in the KPIs.

In response to Appelant's argument that the prior art of record fails to teach or suggest all of the required steps of dependent claims 16, 22, 24-25, 47 and 49-50, the Examiner respectfully disagrees. Sands teaches a loader having a function that calculates scores based on the received data and the performance information stored in the KPI store to indicate changes in the KPIs (page/line 4/5-12, regarding the values

associated with the changes in performance). Thompson further teaches the presentation of information, with the ability to sort and filter the data within reports (column/line 9/1-31, regarding flexible presentation unit; column/line 10/52-11/15, regarding report data analysis and report creation wizard for data element arrangement). Moreover, wherein the printed matter is not functionally related to the substrate, the presented matter will not distinguish the invention from the prior art in terms of patentability. *In re Gulack*, 217 USPQ 401 (Fed. Cir. 1983), *In re Ngai*, 70 USPQ2d (Fed. Cir. 2004), *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.01 II.

Therefore, it would have been obvious to one with ordinary skill in the art to interpret the invention of Thompson in view of Sands, in further view of Pokorny to teach the required steps of dependent claims 16, 22, 24-25, 47 and 49-50 regarding the mere arrangement of data. Thompson in view of Sands, in further view of Pokorny does teach and suggest the limitations of claims 16, 22, 24-25, 47 and 49-50.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/BRANDI P PARKER/

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